REFLECTIONS

ON THE CASE OF

A REGENCY.

BY A GENTLEMAN OF LINCOLN'S INN.

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A REVIEW

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THE melancholy event which has occaſioned the preſent diſcuſſion, is ſo new in the annals of this country, that it is no wonder ſome confuſion of ideas ſhould ariſe, in determining by what means the conſequences of it may beſt be averted.

When the public was firſt informed of the nature of his Majeſty's diſorder, there was but one opinion entertained by all conditions of men; that the Heir Apparent, of full age, was called upon to ſupply the temporary intermiſſion of the royal authority, as, if Providence had diſpoſed otherwiſe of his parent, he alone would have had a title to ſupply his place. This idea perhaps was more the reſult of feeling, than of reflection; that the eldeſt ſon ſhould ſtand in

the place of his father, and ſupply his incapacity to act, is a natural ſentiment in a country habituated to regard the courſe of hereditary ſucceſſion, as a fundamental law.

On the very day that the condition of his Majeſty was aſcertained, by legal evidence, to two great bodies in the ſtate, a difference of opinion diſcovered itſelf. On the one ſide it was maintained, that "the Prince of Wales had no more right "to the exerciſe of royal authority, during the "King's incapacity, than any other individual "ſubject." On the other, it was contended, that "the Prince had, by his birth, a title to be "declared in Parliament, but not conferred by "any authority now exiſting." Whatever be the reſult of the deliberations of either, or of both theſe aſſemblies on this ſubject, the public opinion muſt finally decide the controverſy; for in an imperfect ſtate of government, (as that unqueſtionably is into which the country has fallen,) that which in public eſtimation is unjuſt, can never gain a firm eſtabliſhment.

It is the right, therefore, of every man, and it may be the duty peculiarly of ſome, fairly and impartially to diſcuſs a ſubject, the moſt important of any which has occurred for a century in this kingdom, upon which the error of a moment

ment may entail an endleſs train of evils upon our lateſt poſterity.

The firſt queſtion, which every man will naturally ſtate to himſelf, before he yields up his judgment to the guidance of any authority, is, " Whether this point has received ſo deliberate " a conſideration as its importance demands?"

On the 10th of December, the point was firſt ſtarted in an irregular converſation in the one aſſembly; on the 11th, it was ſtill more irregularly *broached* in the other. A ſearch for precedents was then directed by each of theſe aſſemblies. On the 12th, a report of the precedents was made to the Lower Houſe, when they were ordered to be printed. On the 15th, this report, containing eighty-four folio pages, many of them filled only with the titles of public records and acts, was delivered for the uſe of the members. On the next day, when it was ſcarcely poſſible that the moſt diligent man ſhould have peruſed a fourth part of this information, (all which muſt be ſuppoſed to have been material,) the ſubject was taken into conſideration, and received a deciſion. In the Upper Houſe the report has not yet been printed, and more time has been employed in the mere ſearch for precedents, than was allowed in the other for the whole proceeding.

But perhaps this expeditious deciſion was not obtained without a full and patient hearing of all that could be alledged in favour of a claim, which ſurely is not ſelf-evidently groundleſs. Due notice had been given to his Royal Highneſs, that the extent of his right, as Heir Apparent, was brought into diſcuſſion; that it was to be debated, whether he ſtood upon the common level of any other individual ſubject; a claim had been diſtinctly ſtated on his behalf, and his attorney and ſollicitor were called to the bar, and heard in ſupport of it. No ſuch courſe was purſued, ſo far as the public is informed.

It may be thought perhaps that the preſſure of the occaſion required uncommon expedition. The neceſſity of reviving the exerciſe of royal authority, and thereby giving a legal form and an active energy to the proceedings of the two Houſes, might well have juſtified an immediate nomination of the Prince of Wales without any diſcuſſion, or explanation of the grounds on which that nomination proceeded, if it be true indeed (what all at preſent profeſs) that there is no intention to ſet him aſide. Any difference of opinion would then have remained a mere ſubject of ſpeculation, that would not much have diſturbed the public repoſe. When from different reaſons, and from various motives, men

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concur in the ſame end, the diverſity of their opinions is no longer a ſubject of contention, the end being attained. The preſſure of an occaſion can afford no ſufficient reaſon for a precipitate determination upon a matter, where the deciſion is more likely to inflame, than to reconcile, the difference of opinion; and which may again break out, after it has ſeemed to ſubſide, and while it ſubſiſts, muſt leſſen the confidence in government, and diſtract the minds of the people.

The queſtion thus unfortunately, and (if what is profeſſed be fairly meant) unneceſſarily brought into diſcuſſion, reſolves itſelf ſimply into this—whether, in the caſe of an incapacity of the King upon the throne, by the ſudden viſitation of God, the conſtitution hath made any proviſion for the exerciſe of the royal authority, during the continuance of ſuch incapacity? It may at the firſt view ſeem almoſt impoſſible that any perſon ſhould maintain the negative of this propoſition; and probably in unequivocal terms no one would aſſert that doctrine. That a conſtitution of which we ſo juſtly boaſt, allowed by the general conſent of all enlightened men, to be ſuperior to any ſcheme of policy that the wiſdom of man has planned, ſhould reſt upon ſo ſandy a foundation, that it muſt fall to pieces upon any ma-

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lady to which the human frame is ſubject, is an inconceivable ſuppoſition. It may therefore be aſſumed, that it will not be denied in direct terms, that in every caſe, except that of an extinction of the Royal Family, on which the crown is entailed, or of a forfeiture by the breach of that original contract by which it is held, there is a remedy provided for preventing the diſſolution of the Government, in conſequence of the incapacity of the Sovereign to exerciſe, in his own perſon, the regal power.

To find this remedy, we muſt ſuppoſe, either that there is ſome certain perſon, to whom, in that caſe, the temporary exerciſe of regal power will appertain; or that there muſt be an election of ſome perſon or perſons, to whom the exerciſe of that power ſhall be entruſted.

The opinion aſcribed to Mr. Pitt, adopts the latter ſuppoſition, as the former is the foundation of the opinion held by Mr. Fox.

The truth, or falſehood, of each of them, muſt be tried by their conformity to the known laws, and to the general principles of the Government, and by the conſequences that would attend either of them.

Mr. Pitt, by aſſerting, that the Prince of Wales has no more right than any individual ſubject in the kingdom, neceſſarily implies, that

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every ſubject has an equal right. He conſiders, then, the Regency as an elective office, to which all men are equally of right eligible; and he maintains, that the right of election reſides in the Peers, and the Repreſentatives of the Commons.

This doctrine leads, by neceſſary and immediate conſequence, to an aſſertion, that the incapacity of the King works a diſſolution of the Government; becauſe, what he deems the remedy provided for preventing it, in ſome obvious caſes, is totally impracticable; in others, impracticable without a direct breach of poſitive laws, which amounts, in fact, to a diſſolution of the Government; for when it cannot be carried on, but by breaches of law, it is in a ſtate of diſſolution.

The Peers then, and the Members of Parliament, are to take upon them the character of electors, for the ſafety of the ſtate, and of neceſſity: if that neceſſity, which defends whatever it compels to be done, be the ſource from which this extraordinary right is derived, it would be rather more conſiſtent that it ſhould but belong to one of theſe bodies, for it muſt certainly be admitted that they may differ. The Peers may prefer a Regent; the Members of Parliament a Council of Regency; the one may inſiſt, that the Regent, or Regents, ſhould be choſen from the Peerage;

Peerage: the other, that a Commoner is more worthy; both may agree whom to exclude, and differ whom to chuſe. The poſſible concurrence of two bodies, co-ordinate, independent, and having oppoſite pretenſions and intereſts, is then the remedy held forth for reſtoring the government. A power derived from neceſſity for attaining an end, which power is ſo placed that there is an equal chance of its defeating that end, ſeems a ſoleciſm in politics, not to be eaſily reconciled with that wiſdom we are taught to admire in the Britiſh conſtitution. Two ways might be taken, by which the inconvenience of this double right of election might be avoided. As the Lords aſſumed to themſelves the right of electing a Protector in the reign of Henry the Sixth, the Commons might now take it as their turn; for an alternate, is preferable to a concurrent nomination. Or they might (and not without a precedent) vote the Houſe of Lords to be uſeleſs, as they have already, by a reſolution, inſtructed them what is their right, and preſcribed to them what is their duty.

Neither of theſe expedients, however, could prevent another inconvenience to which this remedy of an elective Regent is expoſed; the unfortunate cauſe of our preſent affliction might have happened after the diſſolution of a Parliament,

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who are then to act as the repreſentatives of the Commons? the Members of the laſt Parliament? by what right will they reſume their ſeats? Their ſervice is expired; they have no freſh powers; they uſurp upon the rights of the people, if they take upon themſelves to act as their repreſentatives. It may be ſaid, that there are precedents for this at the Reſtoration, and at the Revolution. There are ſuch precedents undoubtedly, and the Government was at both times diſſolved. The perſonal conſideration of thoſe who were then aſſembled, engaged the gratitude of the better part of the nation, and the force they were armed with, procured the ſubmiſſion of the ill-affected. If ſuch inſtances are ſaid to be applicable to the preſent caſe, it muſt be allowed alſo, that the incapacity of the King works a diſſolution of the Government.

We may ſuppoſe likewiſe a caſe in which a Parliament has been diſſolved, and another elected, but which has not met at the period when a ſimilar misfortune might have befallen the country. The old Members could not (I preſume) in that caſe be deemed the repreſentatives of the Commons; by what means could the new, be aſſembled, qualified, and formed into a regular Houſe, without a direct breach of every law enacted for the convocation of

a Parliament, and every conſtitutional form? This again would amount to a diſſolution of the Government.

It ſeems not immaterial to the purpoſe of the preſent inquiry, to conſider what powers can be exerciſed by the Lords and Commons, without the intervention of the royal authority; and it is fit to be recollected, not only that it is expreſsly provided *, that the Kings or Queens of this realm, with and by the authority of Parliament, are able to make laws of ſufficient force and validity, to limit and bind the crown, and the deſcent, limitation, inheritance, and government thereof; but that it has alſo been found neceſſary † to declare, that it is criminal, adviſedly to aſſert, that both Houſes of Parliament, or either, have or hath a legiſlative power without the King; and that this law is neither repealed, nor its authority weakened, by the proceedings at the Revolution. Theſe proceedings were juſt and neceſſary, becauſe the King had, by his own acts, diſſolved that Government, which the nation was called upon to re-eſtabliſh, and which with great temper and wiſdom was re-eſtabliſhed upon the firm baſis of its ancient laws. The hiſtory of England affords many inſtances of the

* 6 Ann. c. 7. † 12 C. II. c. 1.

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dangerous conſequences of legiſlative acts done by the two Houſes of Parliament, and the lateſt experience, in the reign of Charles the Firſt, ſhews that one of the two will ſoon be found unneceſſary, and the other cannot long maintain its individual authority, when the whole frame of the government has been thus disjointed.

There is but one caſe in which the two Houſes of Parliament can aſſemble, without the King's authority calling them together; and that caſe ariſes, by the ſpecial direction of the act of ſettlement, upon the demiſe of the crown. By what means could the two Houſes be aſſembled, during a long prorogation, to make the election of a Regent? by what form is that election to be declared? Where the Conſtitution has given a power to any aſſembly to elect, it hath given alſo powers to make that election effectual; there are writs for this purpoſe, proper perſons to attend, and a proper authority to declare the election. It will be a poor cavil to ſay, that the election of a Regent is not an act of a legiſlative nature, or that the conſtituting that authority, from which all legiſlative acts are to receive their efficacy, is not of ſomewhat a higher nature than a turnpike law; but all arguments have as yet admitted that the two

Houſes are not competent to enact even ſuch a law.

A device is ſaid to have been practiſed in the tragical reign of Henry the Sixth, to give a colour of law to the election of his competitor for the crown, to be the Protector of the King and Kingdom, by an ordinance of the two Houſes, for affixing the great ſeal to a commiſſion. If it could be forgot that that act was followed by nine pitched battles in the courſe of the moſt bloody and deſtructive civil war that we read of in any hiſtory, yet ſtill the meaſure is ſufficiently bold to alarm all conſiderate men. That a bill ſo paſſed, is in truth merely an ordinance of the two Houſes, cannot be denied; the external form adds nothing to its validity. If one act of this nature may paſs, why may not every act of the executive power paſs in the like manner; the appointment of all offices, the command of the navy and army, the diſpoſition of the public money, the execution of foreign treaties? This is no wild ſuppoſition, for ſuch was at one period the ſtate of this country.

The juſt balance of the Conſtitution can only be preſerved by the regal power in full exerciſe, ſubject to the controul, but not to the diſpoſal of the two other branches of the Legiſlature. If they can annihilate, create, or direct the third,

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the new-caſt Government muſt fall into an oligarchy; for, in the hiſtory of the world, it has ever been found, that aſſemblies limited in numbers and unlimited in their duration, muſt be under the guidance of a few. With a Regent thus elected, and neceſſarily dependant on his electors, what reaſonable ſecurity could the people poſſeſs for their right of electing future repreſentatives? The long Parliament continued itſelf apparently againſt the King, compelled to aſſent to the act for its continuance, but in reality againſt the intereſts of the unthinking and deluded people.

We have known, in our own times, inſtances where a great part of the nation has petitioned the Crown for a diſſolution of Parliament; where a Parliament has been diſſolved, and it ſeemed to be a popular meaſure; the people, at both times, felt that it was fit they ſhould receive back the powers they had delegated. Has no wiſh been expreſſed to make their preſent repreſentatives permanently ſecure in their ſeats? What intereſt could an elective Regent feel, to return his electors to their conſtituents, eſpecially when the argument of ſtate neceſſity creating right, may ſo eaſily be applied for making the office of an elected Regent, and the powers of his electors co-extenſive in their duration?

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A Regent, it has been maintained, ought to poſſeſs only a certain portion of the regal power; and this perhaps may be a principal reaſon for aſſerting, that the Regency is elective. Whatever that portion of power be, which is to be withheld from him, it muſt either ceaſe, or be transferred into other hands. In both caſes, the executive power will become dependant on the two other branches of the Legiſlature; but it is to their mutual controul on each other, that the people of England truſt for preſerving the Conſtitution entire; and, in that view, every intelligent writer on the law and government of England, has conſidered the legal prerogative of the Crown, as a truſt for the people, and not a matter of perſonal advantage to the Sovereign. If, by ſome improvident neglect, any dangerous or unneceſſary powers are lodged with the Crown, in a full and perfect Parliament, theſe powers may very fitly be reſtrained; but a Regent, who would aſſent to the reduction of them, beyond the period of his own authority, would be guilty of a breach of his truſt for the protection of the King, and every perſon who, by a previous ſurrender of any portion of the royal authority, ſhould barter for his own appointment, would, by ſo doing, declare himſelf unworthy of it.

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It is fair argument, in conſidering the caſe of an elective Regency, to ſuppoſe that election to fall on ſome perſon not of the blood royal, and it is a probable ſuppoſition, that the ſenſe of their dignity and duty to the Crown, would not permit the Princes to accept a nomination under any unworthy limitations; in that caſe, it will be material to ſee what would be the ſituation of the Royal Family, and particularly of the Heir Apparent.

The law of the land has ſhewn a peculiar attention to the character he ſuſtains in the ſtate; he is born a Peer, with an ample revenue, and the lofty poſſeſſion of the Duchy of Cornwall: the principality of Wales is alſo his. In both he holds rights and juriſdiction above the degree of a ſubject. The law has alſo guarded the ſafety of his perſon with the ſame jealouſy as the perſon of the King; to compaſs, or imagine his death, is high treaſon.

The ſafeguard of the law, however, has proved but a feeble ſafeguard to Princes, when all the power of Government has been transferred into oppoſite and jealous hands. Muſt he attend in the train of Courtiers of the elected Regent or Regents? will not every action, word, or look, be watched with all the ſuſpicion that muſt ever accompany the poſſeſſor of precarious authority?

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A competitor, and, at the ſame time, a declared ſucceſſor, was a ſituation known in the unhappy reign to which it has become the faſhion to reſort for precedents. The Duke of York ſtood thus with reſpect to Henry VI. and the event was fatal to both. If the preſence of the Prince of Wales would be unpleaſant to the Regent, his abſence would create equal uneaſineſs. The hiſtory of our own country may inſtruct us in the alarming conſequences that ſituations ſo incompatible produce, and that, with no great exertion of imagination, every man may eaſily conceive. Should the unhappy obſtinacy of his Majeſty's diſorder give a long continuance to the Regency, the condition of the excluded Prince muſt become more humiliating than that of any common ſubject; and who will inſure to him the poſſeſſion of the Crown, when Providence ſhall open the ſucceſſion to him, againſt the force a Regent may acquire, and the arts with which he may uſe it? Without ſtating violent ſuppoſitions which, it may be thought, the temper of the age would not admit, (though that is but a frail ſecurity) no perſon, of the coldeſt imagination, can poſſibly doubt, that ſuch a Regency would be a ſtate of perpetual conteſt and diſſention, between the party of the Regent, and the party of the Princes, and that a firm, united, and

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efficient Government would, under theſe circumſtances, be impoſſible.

The idea of an elective appointment of a perſon to ſupply the exerciſe of the executive power, has hitherto been treated as ſubject to no other objections, than ſuch only as ariſe from the peculiar frame, the forms, and the modes of the Engliſh government; but were the kingdom now in the condition of a new-ſettled country, where that queſtion was open for diſcuſſion, which the fancy of an ancient hiſtorian has ſuppoſed to have been propoſed by Romulus to the firſt inhabitants of infant Rome; which form of Government they would prefer of the ſeveral deſcriptions then known? would there be found amongſt the ſubjects of this ſtate many who would renounce the monarchical form of Government, which, except for a very ſhort, and a very unhappy period, has, from the remoteſt times, been the law of this iſland? If amongſt the members of ſuch an aſſembly of the whole community, it were reaſonable to ſuppoſe that a conſiderable number might prefer a government totally republican, I ſhould with ſome confidence refer to them a ſecond queſtion; Whether, if a majority had adopted monarchy, they choſe that monarchy ſhould be hereditary or elective? That the welfare of millions ſhould be entruſted to the hazard of a ſuc-

ceſſion of good Princes in a courſe of deſcent, is certainly a very debatable point; but if unerring experience has proved, that the conteſts for ſovereign ſway are more pernicious to any ſtate, than the unfitneſs to reign of individuals in a given ſeries of Princes, and that prudent laws may controul and remedy their defects more eaſily than they can reſtrain the luſt of power, the rage of ambition, the *regnandi dira cupido*, which inflame the minds of private men when there is no ſtable rule of ſucceſſion; that the miſconduct of Princes is leſs pernicious, as in general the effects of it are leſs attrocious, than the commotions excited by the inordinate ambition of individuals; there could be no doubt that the opinion of the beſt and wiſeſt politicians would be confirmed; that of every given ſpecies of Government, an elective monarchy was the leaſt deſirable. This queſtion being decided, it might then be very ſafely put to all, whether they would leave a poſſibility of election in any caſe of the interminion of royal power which their foreſight could diſcern, and particularly whether they would entruſt that election to thoſe bodies of men with whom they had thought proper to entruſt the checks and limitations of regal authority, and in diſtruſt of whom they had inveſted in the Sovereign, certain powers of controul, and beſtowed upon

upon him certain prerogatives for their due regulation? I can entertain little doubt, that the common aſſent of all would declare that the exerciſe of regal power ought in every caſe to devolve in a courſe of ſucceſſion, on the ſame principles, and for the ſame political good that an hereditary monarchy was preferred to an elective.

It would argue a very imperfect conſideration of this queſtion, ſhould it be diſmiſſed without any obſervation on that collection from the records of the kingdom, which are ſuppoſed to have furniſhed ſome precedents for the preſent occaſion. That none can be produced ſtrictly applicable (as what lawyers call a precedent in point) muſt be apparent to every man who knows only the regal table in his almanack, for in a courſe of eight hundred years it has never happened that by any means, except a real demiſe of the crown, there has been a ceſſaſion of the actual exerciſe of the royal authority in the perſon of the King, when his eldeſt ſon and heir apparent was at the ſame time capable to ſupply his place.

The precedents produced are either in the caſe of the infancy of the Sovereign, of his temporary abſence, or of his ſuppoſed incapacity from the infirmity of his mind. The faireſt way to examine their force, as applied to this queſtion, will be to diſcuſs them ſeparately, before any ge-

neral obſervations are drawn from them; premiſing only this remark, that extracts from the rolls of Parliament, in a country ſo often diſtracted by civil convulſions as England, without any reference to the cotemporary hiſtory, will often convey to the reader the moſt erroneous ideas of the laws and government of the kingdom.

The firſt precedent in the liſt is an excerpt from the Parliament roll of the 4th of Edward the Third; containing the firſt article of the impeachment of Mortimer: it ſtates that—"in the "firſt Parliament of the King, held after his "coronation, a Council of fourteen perſons was "appointed, of which four were always to be "attendant on his perſon, without whoſe aſſent "no great buſineſs was to be done. That Mor-"timer, accroaching to himſelf royal power, "and the government of the kingdom, above "the ſtate of the King, put out and placed the "officers of the houſhold, and others, ſuch as "were of his party, and ſet perſons about the "King, to eſpy his words and actions, ſo that "he could do nothing as he would, but only as "a man under guard and reſtraint."

From this entry it may probably be inferred, that a Parliament called by Edward the Third, in the firſt year of his reign, who, at the time of his acceſſion, was certainly juſt entered into his fifteenth

fifteenth year, had appointed a Council of Regency to direct the affairs of the kingdom during his minority. The roll of Parliament in the first of Edward the Third is not extant; but from the result of an accurate inquiry, made by Mr. Justice Foster *, we know that the Parliament entitled in the first of Edward the Third, was, in fact, begun and ended in the life-time of Edward the Second: from the writs of summons we know that it was called by writs, issued in the name of Edward the Second, and opened by the Prince as *custos regni*: from the historians, and the public acts in the *Fœdera*, we know that the same Parliament deposed the King, and elected the Prince as his successor, after which it is very probable they appointed a Council to direct him. That Council, it is certain, never was suffered to interfere, the government being entirely in the hands of the Queen, and of Mortimer; who, by the management of the household, made it impossible for Edward to govern, when the uncommon maturity of his understanding had fully qualified him for the duties of royalty; which he, after a successful struggle for it, so gloriously discharged.

If it were material, after a true account of the transaction to which this first quotation from the

* Foster, p. 384.

records

records relates, to make any remarks on ſuch a precedent, it might be obſerved, 1ſt, That the appointment of the Council of Regency was what a mere lawyer might contend to be a regular act of a parliament with the royal aſſent; and no one aſſerts, that acts done by the King, Lords, and Commons, may not limit the crown, and the Government thereof, and conſequently the Regency. 2dly, That if the quotation has any effect, it proves the crown to be elective, not the Regency; though it muſt alſo be added, that it proves the Heir Apparent to have been the object of that election. 3dly, It proves that a Prince of very extraordinary reſolution and talents could neither carry on the Government, nor protect himſelf; in the words of the record, "could "do nothing as he would, but only as a man "under guard and reſtraint," while the putting out and placing the officers of the houſhold, ſuch as were of their party, belonged to the Queen his mother, and to her Miniſter. But the trueſt obſervation is, that no inference ſhould be drawn from ſuch a precedent, except that the times in which ſuch tranſactions paſſed were very ferocious, very irregular, and very unhappy.

The next precedent from the records contains ſome extracts, but incomplete, of the proceedings of Parliament in the firſt year of Richard

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the Second. That Prince was eleven years of age at the time of his acceſſion, and the nation was ſtrongly attached to him from a regard to the memory of his father, the Black Prince. The Princes of the blood royal were numerous, and not united. His eldeſt uncle, the Duke of Lancaſter, was a Prince of abilities, and of great power, but extremely unpopular; and the calumny of his enemies had imputed to him dangerous intentions againſt the King. We do not find his appointment, as Regent or Protector, upon the rolls of Parliament; but we know from cotemporary hiſtorians that his title was acknowledged, that he declined the office from motives of prudence and duty, and that the Council was appointed with his conſent. Froyſart ſays,— "England was then to be governed by the Duke "of Lancaſter, by accord of all the land; yet, "ſoon after the coronation, perceiving that all "things in the kingdom were like to become "new, and his care not to be valued amongſt "new men, and fearing if any thing ſhould hap-"pen amiſs to the King and kingdom, it would "be imputed to him, and that he ſhould, for the "good he did, receive ſmall or no thanks; with "the King's leave he retired from Court." This paſſage is copied from Brady *, who refers to the

* Brady's Hiſtory of England, Vol. II. p. 326.

places

places in Froyſart and Walſingham, but he has omitted what follows in Walſingham †, "*ſed* "*ante receſſum, (Ducis Lancaſtriæ) ejus conniventiâ* "*ordinati ſunt qui Regis hærerent conſilio, & qui* "*quodam modo tutelam haberent.*" The names of that Council were afterwards declared in Parliament. The adminiſtration proved very unſteady and perplexed, and the contentions of the different parties occaſioned frequent appeals to Parliament, and many interferences with the executive government far beyond the bounds of diſcretion. An attentive reader of the Engliſh hiſtory at this period, will not fail to obſerve, that all the diſorders of that reign, the diſgraces abroad, the diſſenſions at home, and finally the depoſition of the King, had their origin in the confuſion and miſrule of his minority; and he will be inclined to claſs this precedent with the laſt in point of utility, both ſetting forth what ought to be ſhunned, and not what ought to be followed. It is however, when fairly ſtated, rather to be quoted in favour of the right of the Royal Family, than againſt it.

The next precedent is taken from the tempeſtuous minority of the unhappy Henry the Sixth, ever diſtracted by the ambitious deſigns

† Walſingham, f. 198. n. 30.

of

of Cardinal Beaufort, ill reſtrained by the imperfect authority of the Duke of Glouceſter, who, with many virtues, was neither poſſeſſed of prudence, nor of temper. At that time the Adminiſtration was committed to a Protector with a Council, by whoſe diſſenſions and miſrule the intereſts of the King and kingdom were ſacrificed, France was loſt, the honour of the Engliſh arms ſullied, and a ſure foundation laid for the eminent miſery by which the ſequel of that reign was fatally diſtinguiſhed. It is by no means true, however, that the claim of the Princes of the blood was then adjudged to be groundleſs. The Duke of Glouceſter claimed to have the government, affirming that it belonged to him of right, as well by the mean of his birth, as by the laſt will of the King his brother. To the laſt ground of his claim it was truly anſwered, that the King could not commit to any perſon the government or rule of the land, longer than he lived; and his claim, by the mean of his birth, could not be admitted in the life-time of his elder brother, the Duke of Bedford. The concluſion is truly ſtated in the *acta regia*, fo. 263. "The Duke of Bed-
" ford was the eldeſt of the two brothers, and
" by conſequence had a right to the adminiſtra-
" tion of the affairs of England preferably to his
" younger brother; therefore the Parliament

 " made

" made an order that the Duke of Bedford ſhould " be Protector in England as long as he was " actually reſiding in the kingdom, and that, in " his abſence, the Duke of Glouceſter ſhould " enjoy all the prerogatives annexed to that " dignity, in his own right, and not as deputy " or lieutenant."

In all the other caſes of minorities, the appointment being made by act of Parliament, no inference can be drawn from them, but that the Kings or Queens of this realm, with and by the authority of Parliament, are able to make laws to bind the Crown, and the deſcent, limitation, inheritance, or *government* thereof; a propoſition no man ever queſtioned, and which confirms, inſtead of contradicting, the doctrine that the two Houſes alone poſſeſs no ſuch power.

But it is argued, that limitations and reſtrictions have been impoſed on the Government during a minority. They have ſo; and have they not alſo been impoſed when the King was of full age? It has often been the right and duty of Parliament to propoſe ſuch reſtrictions, and the nation is much beholden to them for perſevering till they had obtained the royal aſſent to many of them. The laſt Parliament is entitled to the public gratitude, for the reſtrictions obtained for diminiſhing the influence of the Crown. But all

ſuch

ſuch meaſures, as well thoſe during a minority as the others, have been carried in a complete and perfect Parliament, when the royal authority was either in full exerciſe, or duly repreſented. And the ſole difficulty of the preſent caſe ariſes from the defect of the exerciſe of the royal power, which renders all ſuch precedents totally inapplicable. The reſtrictions impoſed on the power of protectors, during a minority, were undoubtedly all legal; whether they were alſo wiſe, let the hiſtory of the kingdom, during ſuch minorities, teſtify.

Another precedent is ſet forth of the election of the Duke of York to be protector, in the 32d, and again in the 34th years of Henry the Sixth. This has been treated as a caſe of incapacity, bearing a cloſe analogy to the preſent. May God forbid that any ſimilitude be ever traced between the tranſactions of which that precedent makes a diſtinguiſhed part, and the hiſtory of the preſent æra. It cannot but be obſerved, however, with ſome degree of alarm, that reſort ſhould be made to a proceeding, and entries of acts produced as legal authorities, which not only all hiſtorians have reprobated, but which, in a book ſo well known, and ſo highly valued as Foſter's Crown Law, are ſtated with the condemnation they deſerve.

The hiſtory of that proceeding requires ſome diſcuſſion. Henry the ſixth, who never was poſſeſſed of a very ſtrong mind, fell about the month of October, 1453, into a deep melancholy, the conſequence probably of an epidemical diſorder, which had then broke out in England. The Duke of York, who had long entertained a deſign upon the crown, ſetting up a title by hereditary right againſt the parliamentary entail on the houſe of Lancaſter, was ſtimulated by the birth of a Prince, in October, 1453, to make the attempt, which he had hitherto forborn, becauſe the King had been twelve years married without children, and was of a ſickly conſtitution. By alliance and by friendſhip he had attached to his party ſome of the moſt powerful noblemen in England; by their influence in council, he had procured a commiſſion to himſelf, as the King's Lieutenant to hold the Parliament, and have it adjourned from Reading to Weſtminſter, more conveniently ſituated for his purpoſes, the intereſt of his brother-in-law the Earl of Warwick, and his own being very powerful in the City of London and the adjacent country. Previous to the day of meeting Thorpe, Speaker of the Houſe of Commons, and zealouſly attached to the houſe of Lancaſter had been taken in execution upon a judgment, in a ſuit trumped up againſt him by the

the Duke of York, in the preceeding Michaelmas term.

The Parliament met on the 14th of February, 1454, the Duke of York's commiſſion to hold it being then read, and the firſt proceedings is a requeſt of the Commons for the enlargement of their Speaker. The Lords aſked the opinion of the Judges, who declining to anſwer as to the privileges of Parliament, declare at the ſame time, that it is uſed in the courts below, that if any member be arreſted for any caſe, but treaſon, felony, or ſurety of the peace, or condemnation before the Parliament, he ſhall be releaſed to attend upon the parliament. Without regard to this opinion, which hath ever been clear law, the Lords agree, and conclude that Thorpe *according to the law*, ſhall remain ſtill in priſon, the privilege of Parliament, or that he was Speaker thereof notwithſtanding, and the Commons are commanded in the King's name to chooſe another Speaker, which they very humbly do, and their choice of Thomas Charleton is approved on the 16th of February. An adjournment then took place till the 19th of March. Cardinal Kempe, who was Archbiſhop and Chancellor, died ſuddenly; he is mentioned as preſent in Parliamernt on the 19th, and on the 23d, his death is notified to the Lords, who agree to appoint certain Biſhops and Lords to repair to the King's

King's preſence at Windſor, not to examine into his ſanity, but to inquire his pleaſure whom he would have for Archbiſhop and chancellor, and whether he will change any of the council; the Lords having, at the requeſt of the Commons, in execution of his Majeſty's declaration, formerly made in the Parliament at Reading, that he would appoint and declare a council, taken upon them to name certain Lords and perſons under his Majeſty's correction. On the 25th of March, the Lords who had returned from Windſor, make their report, which in effect is, that they had moved and ſtirred his majeſty by all the ways and means they could think to have anſwer of the ſaid matters, but they could have none. No circumſtance is mentioned relating to his ſtate of health, but that he was feeble, and led into the chamber between two men. On the 27th the Lords, by themſelves, elect and nominate the Duke of York, for certain cauſes them moving, Protector and Defender of the realm, not during the King's illneſs, but during *his pleaſure*. The Duke thus elected delivers in a declaration in moſt humble terms of his own inability, with ample profeſſions of his reliance on their ſupport, and the Lords return an anſwer, encouraging him to undertake the arduous taſk, declaring his appointment ſhall be without prejudice to the Prince, who was then five months old; after this exhibition,

exhibition, a ſucceſſion of grants and appointments follows, ſanctioned by the ſame authority which had conferred the office of Protector on the Duke of York. The Government of Calais (a very important command at that time, as it afforded the means of keeping a conſiderable body of troops) was added to the Duke of York's appointment of Protector, the great ſeal was given to his father-in-law the Earl of Salisbury, Thomas Bourchier, his nephew, promoted to the ſee of Canterbury, others of his adherents were equally gratified, and this very loyal Parliament was then diſmiſſed. It is obſervable from one entry in the rolls * reciting that divers and many Lords had abſented themſelves after the fourteenth day of February, and impoſing ſevere fines for ſuch abſence, that this ſeſſion of Parliament was chiefly compoſed of Peers, who were the Duke of York's adherents, and we know from collateral evidence lately publiſhed †, the great dependance in which the Members of the Houſe of Commons were then kept by the Peers of his party.

Thus ſtands the hiſtory of the firſt part of this precedent, namely the election of the Duke of

* Rolls of Parliament, Vol. V, 248.

† Paſton Letters, Vol. I. Pages 97, 99.

York,

York, as Protector, in the thirty-ſecond of Henry the Sixth, and undoubtedly as much credit belongs to it as is due to an act by which a Parliament takes upon itſelf to elect, for Protector of the King, the only enemy whom from the innocence of that King's life he could have in the kingdom, on whom, with a reaſonable attention to their own particular intereſts, thoſe by whom that Parliament was led, had beſtowed all the power of the ſtate, with the direction of the great offices, and the moſt important military command.

The ſecond part of the precedent is found in the next Parliament, which met on the 9th of June, 1455, by writs teſted the 26th of May. At this Parliament the King was perſonally preſent, and it was immediately adjourned to the 12th of November. The report of precedents begins with the proceedings upon the 12th of November, by which means the attention which the entry on the 9th of July would naturally have excited, and the reference to the events, which before that date had taken place, are totally kept out of view.

It muſt be remembered then, that there is no entry of the prorogation or diſſolution of the laſt Parliament; the lateſt date in the rolls * of that

* Rolls of Parliament, Vol. V. page 272.

Parliament

Parliament is the 17th of April, and it is probable that it broke up ſoon after by an unforeſeen turn of affairs. The friends of the Houſe of Lancaſter, animated by the Queen, were not much diſpoſed to acquieſce in the election of ſuch a Protector; they had collected forces, taken poſſeſſion of the King's perſon, and advanced towards London, when the Yorkiſts, who were not unprovided, met them at St. Alban's on the 23d of May, routed their army with great ſlaughter, and made the king, who was wounded in the action, priſoner. One of the hiſtorians near to that time ſays, that they would not then have ſpared his life, but for the reverence the common people felt for the ſanctity of his character. Three days after the victory, writs were iſſued with a very ſhort return; the captive King was produced to the Parliament to declare the innocence of his conquerors, and the treaſon of his own adherents.

It was not thought neceſſary that the King ſhould be preſent at the meeting on the 12th of November; the proceedings of which are gravely produced as the acts of a legal Parliament. The Duke of York again appears in the character of the King's Lieutenant; the Commons requeſt that he may be appointed Protector; the Lords aſſent; the Duke alledges his own inability, but

moved by the intreaty of both Houſes, is at laſt prevailed on to give the King's aſſent to his own appointment; which inſtead of being during the King's pleaſure, was then made irrevocable, without the conſent of Parliament. The Lords and Commons promiſe him their ſupport, vote him a ſalary, paſs an act of reſumption of the King's grants, with a long ſtring of exceptions in favour of their own friends, and are then prorogued on the 13th of December to the 14th of January following. The Lancaſtrian party had, in the mean time, been collecting freſh forces; they reſcued the King from his confinement; and on the 25th of February, 1456, an inſtrument appears, revoking the Duke of York's commiſſion of Protector.

The excerpts from the Parliament rolls ſtop here; had the ſearch gone on but to the roll immediately following, it would have produced a condemnation of all theſe acts in favour of the Duke of York, and an attainder of the perſons concerned in them, by the ſucceeding Parliament held at Coventry, in the 38th of Henry the Sixth; and had it proceeded but one ſtep further, the collection of precedents would have been complete. As it begins with the depoſition of Edward the Second, and the election of his ſon, it would have cloſed with the excluſion

cluſion of the Prince of Wales, the depoſition of his father Henry, and the transfer of the crown to the houſe of York.

Precedents from the public acts of a kingdom, ought never to be uſed for the purpoſe of example, without a due conſideration of the character of the times in which they paſſed. In the various changes to which Government is ſubject, there are frequent, and ſometimes long periods, where fraud and force alone bear ſway; from the practice of ſuch times we can only draw examples of what ought to be ſhunned. The true principles of civil policy were but little underſtood in England before the laſt century; and the theory of the Conſtitution but ill defined before the Revolution. The arbitrary doctrines advanced, during the reigns of the Stuarts, were maintained, and have, even in our days, been attempted to be juſtified by precedents during the reigns of the Tudors. The hiſtory of England, from the death of Edward the Third, to the acceſſion of Henry the Seventh, is a ſeries of acts of violence, ſedition, and uſurpation. The power of Parliament was ſeldom exerted, but as an inſtrument of the external force that overawed its deliberations, and was uſed to give a colour of law to the acts of ſucceſsful violence. The Houſe of Commons had

not yet begun to feel its own conſequence, nor ſhaken off its dependance on the great Lords, who avowedly interfered in the election, and dictated the conduct of its Members. When the power of the Lords was reduced by the civil wars, we find Parliament yielding a ready aſſent to the deſpotic meaſures of the Tudors; till by the increaſe of the wealth of the people, the reformation of religion, and the progreſs of reaſon, a ſpirit of liberty broke forth, which after great convulſions, eſtabliſhed the Government upon its preſent baſis. It muſt, therefore, excite ſome ſurpriſe if, at the cloſe of the 18th century, precedents are produced from the annals of the 14th and 15th centuries for any other purpoſe, than to mark the long train of evils that followed from power conferred by election, and conſequently the great utility of fixing ſome certain rule, by which the exerciſe of executive power may always be tranſmitted in a certain and undiſputed courſe.

For the ſafety of the ſtate, it ſeems to be of little moment in what particular courſe the executive power ſhould devolve, provided that courſe were certain. Had it been ordained that, in all caſes where there is an intermiſſion of the royal authority,

authority, without an actual demiſe of the Crown, the temporary, adminiſtration ſhould be committed to the primate, as it is in Poland on a vacancy of the throne, leſs inconvenience would have followed than muſt attend the total want of any certain rule. Such an arrangement would indeed appear unnatural; becauſe it is incompatible with thoſe habits, by which we are formed to feel a peculiar reſpect for that family which, in a courſe of lineal diſcent, is appointed to rule over us; a reſpect which increaſes in proportion to the degree in which the perſons of that family approach the throne, and which it is impoſſible for us to transfer to any perſon of the like condition with ourſelves. There is undoubtedly in the diſpoſition of the ſubjects of an hereditary monarchy, an innate principal of loyalty, which, though it does not prevent an Engliſhman from feeling a jealous anxiety for the rights of the people, will rouſe itſelf, when he ſuppoſes any encroachment is meditated on the juſt exerciſe of the royal authority. It can only be from a momentary miſapprehenſion, that he can ever entertain a doubt of the efficacy of Parliament to prevent the abuſe of any known and accuſtomed powers, whether held under the title of Regent or of King; but he will, upon reflection, find more reaſon to be alarmed at the formation

formation of new and unaccuſtomed powers conferred on any perſon, the operation of which may ſhift the equal balance of the Conſtitution.

The progreſs of theſe reflections naturally leads to a diſcuſſion of the opinion oppoſed to that which has hitherto been under examination; but it is proper firſt, to take ſome notice of another claſs of precedents, providing for the exerciſes of the royal power during the abſence of a King. Theſe conſiſt of a number of commiſſions to ſome perſon, as guardian to the kingdom, and of commiſſions of Regency. Of the firſt, no more is ſet forth than the title, and a reference to the record; but all are to be found in the *Fœdera*. The commiſſion of cuſtos gives all power, and all acts of regal authority have been done under ſuch commiſſions. All writs are teſted by him, and he fully repreſents the King. In ſome, but not in all, there is an inſtrument in the nature of an inſtruction, reſerving certain articles to the King's diſpoſition. In the number of theſe precedents, it deſerves particular notice, that, during the reign of Edward the Third, (when the Government was regular and undiſturbed), the Heir Apparent, or when he is alſo abſent, the Prince of the blood next in ſucceſſion, is univerſally appointed Cuſtos. There is no leſs than nine ſuch inſtances, and in each

of

of them it has ſo happened, from the ſtate of the Royal Family, that the perſon appointed is an infant, and ſometimes of very tender years.

From commiſſions granted at the King's pleaſure, who may reſerve or grant ſuch portions of authority as he thinks proper, and who certainly intends always to retain the direction of all that he can direct, it muſt be allowed, that no direct inference can be drawn to a caſe of incapacity; but it ſeems impoſſible to account for repeated appointments of infants, by a very intelligent Prince, to an office which might require immediate exertion of judgment, but upon a ſuppoſition, that it would be inconſiſtent to deviate from the line of ſucceſſion, or to veſt ſuch a commiſſion in any perſon of inferior dignity.

The like commiſſions in the reign of Henry the Fifth, are in the ſame manner always addreſſed to the firſt Prince of the blood, reſiding in England.

If in the former part of this diſquiſition, the total impoſſibility of admitting an elective Regency has been fairly made out, from its inconſiſtency with the general principles of a monarchy founded on lineal ſucceſſion, from its want of analogy to any part of the conſtitution, which has provided no certain means of making ſuch election, from the interruption it muſt give to

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the courſe of the known laws, and the breach it muſt make in thoſe which mark the limits of the ſeveral branches of the legiſlature, from the incongruity that two branches of the legiſlature ſhould create or model to their will the third, from the inevitable miſchiefs which not only general reaſoning, but the experience of the very precedents produced, proves to be the conſequences of elective power; if this propoſition has been thus made out, the obvious concluſion is, that there is ſome certain perſon, who, in the caſe that has happened, muſt be called by ſome other title than election to the exerciſe of regal power, for there is no middle way by which the temporary defect can be ſupplied.

The ſubject has been ſtrangely perplexed by a miſapprehenſion of terms. When a perſon is ſaid to have a right to a thing, it certainly is meant, that if juſtice is done to him, he alone *ought* to enjoy it; but it by no means follows, that he is entitled to aſſume the poſſeſſion, eſpecially if that poſſeſſion depends upon an antecedent fact, of which he is not the ſole judge. Every man's experience, who has the leaſt tincture of legal knowledge, will furniſh him with a variety of inſtances, where a man, with the cleareſt right, may, by unduly aſſerting or aſſuming it,

it, make himſelf a treſpaſſer, an intruder, or an uſurper.

When this is fairly underſtood, the diſtinction between right and irreſiſtible claim vaniſhes. He who has an irreſiſtible claim to any thing, muſt be entitled to be admitted to it by thoſe to whom the power of admiſſion belongs; if they exclude him, they act unjuſtly; if without their authority he enters upon it, he acts unwarrantably. If this is clear with reſpect to rights given for the ſole benefit of an individual, it is ſtill more ſo as to thoſe which are in the nature of a public truſt. The principle is the ſame with regard to the higheſt, as to the loweſt claſs of ſuch rights. When it is ſaid, that a perſon has a right by birth to a corporate franchiſe, no one underſtands that it is meant to aſſert that he can exerciſe it without being admitted and qualified. No one would heſitate to ſay, that the neareſt heir of a lunatic has a right to the care of his eſtate, becauſe, ever ſince the Revolution, it has generally devolved upon him; but we do not mean by this, that he can aſſume it without its being committed to him by the Chancellor. If the Chancellor, ſupported as he might be by many precedents of bad times, ſhould give it to another capriciouſly, much more, if he looked to his own intereſt in excluding the heir, we

ſhould make no ſcruple to ſay, he had gone againſt right.

The proceedings that had paſſed with general concurrence, in the examination into his Majeſty's ſtate of indiſpoſition, ſufficiently manifeſted, that it never was meant by any one that the Heir Apparent, without a previous declaration by the two Houſes, could aſſume the Regency; though that falſe ſenſe has been diſingenuouſly attempted to be given to the opinion, that the right of ſucceſſion to the crown gave a title to the Regency. From ſuch a poſition taken in a juſt ſenſe, what danger can be ſuppoſed to ariſe to the rights of Parliament? Except the right to elect, which has already been diſcuſſed, what acknowledged right of either, or of both Houſes, would be affected by the admiſſion of a Regent appointed as of right? An elected Regent muſt have all the authority requiſite to ſuſtain the duties of his function, and the other could require no more.

Precarious authority, by whatever title it is held, muſt ever be leſs ſtrong than permanent. Can it be ſuppoſed, that Parliament ſhould be leſs able to check the acts of a Regent than of a King? but it is on the juſt controul of the two Houſes of Parliament, that we muſt rely for the preſervation of the Conſtitution, and for the juſt

limitation

limitation of the regal power in its fulleſt exerciſe. Can there be any colour for an apprehenſion, that a Regent, after he was in poſſeſſion, ſhould refuſe his aſſent to any bill that would not apply, with equal force, to a Regent elected, as to one entitled of right; except on a ſuppoſition, that it would be eaſier to depoſe the Regent who had no right, than the Regent who had an original title? But is there any man, who thinks the facility of unmaking, as well as making, a Regent would ſecure the peace of the kingdom? The power of making antecedent conditions (if it were ever fit to be exerciſed) is not, in fact, more applicable to the one than to the other. If the power of making any law, can exiſt before the appointment of a Regent, it may as well, perhaps better, be applied to a perſon, who, the inſtant his right is recognized, can give a legal form to any act preſented to him, as to one, who having no more right than any individual ſubject, muſt require a law to be paſſed in due form, before any act whatever can be done by him with perſonal ſecurity.

By the conſent of all men (whatever be their different opinions in other reſpects) a Regent appointed, or recognized, on the foundation of title, would be lawfully in poſſeſſion; in the opinion of many, a Regent elected would not.

If,

If, in the enacting regulations, on no given ſuppoſition, except the blind devotion of an elected Regent to the pleaſure of his electors, which is adverſe to the true ſpirit of the Government, can there be an eſſential difference between the elective, or the hereditary Regent, which is then moſt likely to preſerve the peace of the kingdom, a recognition, or a denial of title?

In another reſpect, the difference, between the two, muſt ſtrike every man's mind alike; the immediate ſucceſſor, eſpecially if he is the Apparent Heir, can never have a real intereſt diſtinct from the intereſt of the Crown; if he has any wiſhes to gratify, they cannot be accompliſhed, but at the hazard of the ſame inconvenience that would fall upon him, if he were Sovereign in full right. He muſt, if he lives, attain that ſituation, and be expoſed to feel the conſequence of his own imprudence; but this is not the caſe of any other perſon, to whom the power might be delegated; his public duty and his private intereſt are perfectly diſtinct; he knows, that upon probable and natural events, he muſt ſink into the condition of a ſubject, and has an obvious bias ſo to conduct his precarious ſituation, as may beſt ſtrengthen him in that condition to which he will deſcend.

Without

Without having recourſe to any conſiderations of the dignity of the Royal Family; without ſtating, as a lawyer muſt and ought, the pre-eminence of the Prince of Wales, and that he is held in reputation of law, as Lord Coke ſays, to be one and the ſame perſon with the King; but putting the argument upon the loweſt terms of convenience, utility, and public ſecurity, I would venture to aſk the queſtion of any ſenſible tradeſman, or farmer, with as much confidence as I ſhould of the firſt peer in the kingdom, whether they do not feel, with ſome degree of ſcorn and indignation, the aſſertion—"That the Prince of "of Wales has no more right than any other "ſubject in the kingdom?" In no town or village in England, were the father of a family diſabled, by the act of God, from carrying on his occupation, would the ſame language have been applied to the eldeſt ſon of full age; or if it had by any angry and intemperate opponent, the churliſhneſs and arrogance of the expreſſion would have diſguſted every worthy and ingenuous mind.

The feelings of the people on ſuch a queſtion, will infallibly prompt them to a very juſt deciſion; but earneſtly wiſhing that no appeal may ever be made, except to their underſtanding, I

ſhould

ſhould propoſe, for their conſideration, a few plain queſtions.

I. Whether the want of a certain rule to decide the appointment to the Regency, would not be more pernicious to the ſtate, than any given rule?

II. Whether every argument of public utility, by preſerving the peace of the kingdom, maintaining the Conſtitution entire in all its parts, and preventing the poſſible diſſolution of the Government, which has induced the nation to adopt the rule of ſucceſſion to the Crown, does not equally apply to eſtabliſh the ſame rule of ſucceſſion to the Regency?

III. Whether any greater miſchief is to be apprehended from a ſucceſſive Regency, than from a ſucceſſive Royalty?

IV. Whether every miſchief conſequent upon an elective monarchy, is not equally to be dreaded from an elective Regency?

V. Whether the conſtitutional check of the two Houſes of Parliament over the Crown be not ſufficiently ſtrong, when the exerciſe of the regal power is held by the Sovereign in perſon?

VI. Whether, inſtead of loſing any part of their authority, the two Houſes of Parliament muſt not, of neceſſity, acquire ſome additional influence, when the executive power is held under

der the determinable and precarious title of a Regent?

VII. Whether it is moſt likely to preſerve, or to overturn the balance of the Conſtitution, ſhould the two Houſes impoſe conditions of their authority antecedent to the appointment of a Regent?

VIII. Whether this can poſſibly be done without allowing that they can make law, by their ordinances?

IX. And laſtly, whether it is ſafeſt for the people to adhere to the old Conſtitution, or to make a new one on the occaſion of the King's illneſs?

When theſe queſtions have been duly conſidered, it will not be difficult for any man to decide, whether it is moſt becoming the character of a true friend to his country, to incline to the opinion, that the Prince of Wales has ſome claim of right, or boldly to aſſert, that he has no more right than any other ſubject in the kingdom.

In a caſe ſpecifically new, it is not to be expected, that a perfect precedent ſhould be found; but it is remarkable that in the great variety of precedents produced from the year 1253, to the preſent time, the inſtances are very few, and thoſe ſuch as may eaſily be explained, where any other perſon but the neareſt Prince of the

Royal

Royal Family has either held the commiſſion of Cuſtos, or the appointment of Regent or Protector. To what cauſe can we attribute this conſent of all ages, but to what an ancient hiſtorian of deſerved credit, calls the common accord of the land, which is not very eaſily diſtinguiſhable from the common law?

The proceedings at the Revolution, it muſt be confeſſed, do not bear an exact analogy to the preſent caſe; but the principles on which that glorious event was decided, and the mode by which it was conducted, may afford ample matter for inſtruction and imitation. A real friend to liberty will never reſt the legality of that juſt and neceſſary meaſure on any other baſis, than the firm and broad foundation of the right of the people to reſume a truſt delegated for their welfare, becauſe it had been perverted to their deſtruction. The members of that aſſembly, which addreſſed the Prince of Orange to take upon himſelf the adminiſtration, poſſeſſed no powers but what the concurrence of public opinion beſtowed. They did well in aſſuming to act without aſking by what authority of law they were warranted; for neither the ſubſtance, nor the forms of law, were at that moment ſubſiſting, and the intention of their acting was to revive both. They found the great ſpring of the machine

machine was broken, and their firſt care was inſtantly to ſupply its place, that all the parts might be reſtored to their due and regular movements; but they proceeded no further than the neceſſity of the caſe required; and, conſcious that to reeſtabliſh a government under a ſtate of actual diſſolution, reverted to the people at large, they immediately gave up the authority which, upon the exigence of the caſe, they had aſſumed, and took the ſenſe of the people, by convening another aſſembly, choſen in the uſual form of a Parliament. This convention was fairly and ſubſtantially a full and free repreſentative of the nation, ſpecially delegated for eſtabliſhing the government. In the courſe of its proceedings, the utmoſt caution was obſerved to eſtabliſh that government upon the baſis of its ancient conſtitution. In the nomination of the Soverign, as cloſe an attention was given to the courſe of lineal deſcent, as the ſafety of the ſtate could in that moment permit. The nomination was clogged with no conditions to depreſs the regal power. The rights which had been violated, were merely declared; and all which could bear a ſuſpicion of being newly introduced, however reaſonable in themſelves, were reſerved for the future diſcuſſion of a perfect Parliament, held under a King who was free to withhold his aſſent. An anxiety not to diſcom-

poſe any of the parts of the machine, nor to weaken the energy of the firſt moving principle, is conſpicuous in the whole proceeding. The idle and paltry contrivance of throwing the great ſeal into the Thames, which James had uſed in hopes of embarraſſing affairs, by precipitating them into anarchy and confuſion, was juſtly ſcorned by an aſſembly which diſdained the mean ſubterfuge of borrowing any colour of authority from unſubſtantial forms. In a manly, open, and bold manner they declared, by reſolution, the vacancy of the throne, and the appointment of the Prince and Princeſs of Orange, and prayed them by addreſs to accept it. The government was then completely reinſtated, with no other alteration than in the name, and the perſonal character of the Sovereign. This event, which no human prudence could have foreſeen, led men's conſideration to the poſſibility of a caſe of election recurring by a failure of the branch of the Royal Family, on which the crown had been conferred, and to prevent (as far as any foreſight could extend to prevent) ſo alarming a ſituation, the act of ſettlement * was framed, in a confidence, which all good men muſt ſtill entertain, that no occaſion ſhould ever offer for any future election.

* 12th and 13th of William III. ch. 2.

From

From this ſummary view of thoſe proceedings, the applications are ſo obvious to what ought to be the courſe of proceeding on an occaſion of a leſs difficult nature, which the revolution of a century has produced, that it is fit theſe Reflections ſhould cloſe here; and if they are of any uſe to others to form their own opinions upon the ſubject, the Author will have nothing to regret, but that the haſte with which they have been publiſhed, afforded no leiſure to attend to the correctneſs of language.

Lincoln's Inn, Dec. 19, 1788.

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